
Coates' Canons Blog: *Bigelow v. Town of Chapel Hill*: When May State Constitutional Claims Against Local Governments Be Dismissed?

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Local governments often find themselves being sued over injuries allegedly caused by their officials or employees. Such lawsuits sometimes include both tort claims and state constitutional claims premised on the same set of facts. For example, a plaintiff who believes she was wrongly arrested during a public protest might sue a city for false imprisonment and for violating her right to assemble under Article I, Section 12 of the North Carolina Constitution.

Like defendants in other cases, a local government may have a particular claim or an entire lawsuit dismissed at the outset of litigation if the plaintiff's factual allegations, taken as true, do not state a valid legal claim. (The law generally requires a court to accept a plaintiff's factual allegations as true when reviewing a motion to dismiss because the plaintiff hasn't yet had the chance to compel the production of evidence favorable to his claims.) Additionally, a local government may have a claim under the North Carolina Constitution dismissed if adequate relief is available to the plaintiff through a tort claim. The existence of an adequate alternative remedy ("AAR") results in the dismissal of a state constitutional claim, regardless of whether the plaintiff's factual allegations describe a constitutional violation.

The recent opinion of the North Carolina Court of Appeals in *Bigelow v. Town of Chapel Hill*, ____ N.C. App. ____ (May 7, 2013), limits the authority of trial courts to dismiss state constitutional claims based on the availability of an AAR. A cursory review of the opinion could also leave the impression that, even when a plaintiff's allegations fail to allege a violation of the North Carolina Constitution, a trial court may not dismiss a state constitutional claim so long as the existence of an AAR is disputed. As explained below, this is a misreading of *Bigelow*.

Governmental Immunity and State Constitutional Claims

A basic understanding of governmental immunity and its relationship to state constitutional claims is necessary to appreciate *Bigelow*. Governmental immunity bars claims against a local government for injuries caused by the negligence or intentional misconduct of its employees in the performance of governmental functions. State law permits counties, cities, and school boards to waive their immunity against such tort claims by purchasing liability insurance. G.S. 115C-42, 153A-435(a), 160A-485(a). Immunity is waived only to the extent of coverage, however. Thus, if a school district's insurance policy expressly excludes injuries arising from athletic events, a student who slips and breaks his arm on a wet gym floor during basketball practice has no negligence claim against the district. Likewise, if a county's insurance policy covers a particular type of negligence claim but only up to \$50,000, the most a plaintiff who prevails on such a claim may recover is \$50,000.

Governmental immunity is typically not a defense to state constitutional claims. This fact sometimes leads plaintiffs to allege both tort and state constitutional claims in hopes of avoiding the total dismissal of their lawsuits if the local governments being sued have not waived immunity from tort liability.

Our courts prohibit a plaintiff from obtaining relief under the North Carolina Constitution when an AAR is available because the judiciary as a whole prefers to avoid constitutional issues. Local governments frequently succeed in having state constitutional claims dismissed by directing courts' attention to the various tort claims (negligence, assault, battery, etc.) plaintiffs could use to seek compensation for their alleged injuries.

It perhaps seems obvious that a tort claim barred by governmental immunity is not an adequate substitute for a constitutional claim. Nonetheless, the North Carolina Supreme Court had to clarify this point in *Craig v. New Hanover County Board of Education*, 363 N.C. 334, 678 S.E.2d 351 (2009). The high court held that the plaintiff in that case had no AAR because the school district's governmental immunity prevented him from pursuing his negligence claim.

The *Bigelow* Case

The plaintiffs in *Bigelow* alleged that the Town of Chapel Hill ("Town") terminated their employment as sanitation workers because they engaged in statutorily protected union activities, made statutorily protected complaints about unsafe work conditions, and – in the case of one plaintiff – filed a grievance over racially discriminatory hiring practices. The complaint asserted the tort of wrongful discharge and violations of the plaintiffs' rights to free speech, due process, and equal protection under the relevant provisions of the North Carolina Constitution. It also alleged that the Town had "purchased liability insurance which waive[d] any claim to immunity it . . . may have."

The Town filed a response to the complaint denying wrongdoing and asserting the defense of governmental immunity, though it admitted having "certain coverage . . . with respect to Plaintiffs' claims." The Town subsequently filed a motion to dismiss all claims. (To be precise, the Town filed a "motion for judgment on the pleadings," not a motion to dismiss, but the distinction is immaterial for purposes of this blog post.) The motion argued that the pleadings didn't allege a valid claim of any kind against the Town and that the plaintiffs' state constitutional claims were barred by the existence of an AAR.

The trial court granted the Town's motion, and the *Bigelow* plaintiffs appealed.

The court of appeals reversed the ruling of the trial court. It first held that the complaint's allegations succeeded in describing a wrongful discharge claim. The court reasoned that an employer who fires an at-will employee for the reasons alleged in the complaint does so in violation of public policy, the legal standard for wrongful discharge. Turning to the plaintiffs' constitutional claims, the court declared that "[a]s long as [the Town's] [governmental] immunity defense remains potentially viable for any or all of Plaintiffs' wrongful discharge-related claims, . . . *Craig* . . . dictates that Plaintiffs' associated North Carolina constitutional claims are not supplanted by those claims." Having reinstated the plaintiffs' claims against the Town, the court of appeals ordered the case returned to the trial court for further proceedings.

What *Bigelow* Stands For

The *Bigelow* plaintiffs expressly alleged that the Town had waived governmental immunity as to their wrongful discharge claim. Why didn't the court of appeals uphold the dismissal of their state constitutional claims based on the presumed availability of relief in tort? After all, the general rule is that a court must take a plaintiff's factual allegations at face value on a motion to dismiss.

The court of appeals read *Craig* to require a final determination that governmental immunity doesn't apply before a tort claim may be deemed an AAR. The procedural posture in which *Craig* came to the North Carolina Supreme Court renders this interpretation questionable. In *Craig* the defendant school district appealed the trial court's denial of its motion for summary judgment on the plaintiff's state constitutional claims. Unlike a motion to dismiss, a summary judgment motion typically isn't filed until the parties have completed the gathering and exchange of evidence in preparation for trial. In ruling on a summary judgment motion, a trial court examines the actual evidence offered in support of or opposition to the motion, not the sufficiency of the plaintiff's factual allegations. Thus, *Craig* didn't require the supreme court to decide whether, on a motion to dismiss state constitutional claims, a trial court must consider a plaintiff's allegation that governmental immunity has been waived.

Instead of relying solely on *Craig* to support its treatment of the plaintiffs' constitutional claims, the court of appeals could have offered at least two other justifications for the outcome in *Bigelow*:

1. It could have said that the plaintiffs' allegation regarding the Town's waiver of governmental immunity involved a conclusion of law. On a motion to dismiss, a court is bound by the factual allegations but not the legal assertions in a complaint. For instance, while a court must accept as true a complaint's allegation that a city employee punched the plaintiff, no deference is owed to a conclusory allegation that the city is liable for the employee's conduct.

Similarly, the mere assertion that a local government has waived its immunity in tort may not provide the factual information necessary for a court to determine whether an AAR has been alleged.

2. The court of appeals could have explained that affirming the dismissal of the plaintiffs' state constitutional claims would create a dilemma for plaintiffs in future lawsuits against local governments. Under current case law, the failure to allege that a local government has waived governmental immunity can expose a plaintiff's tort claim to dismissal. *E.g., Paquette v. County of Durham*, 155 N.C. App. 415, 418, 573 S.E.2d 715, 717 (2012) ("In order to overcome a defense of governmental immunity, the complaint must specifically allege a waiver of governmental immunity. . . . Absent such an allegation, the complaint fails to state a cause of action.") Allowing the inclusion of such an allegation to justify the dismissal of state constitutional claims would force plaintiffs to choose between their tort claims and their claims under the North Carolina Constitution before they even file their complaints.

What *Bigelow* Doesn't Stand For

While *Bigelow* wasn't a win for local governments, it's important to understand what it doesn't do. The *Bigelow* opinion doesn't hold that a trial court may never grant a motion to dismiss a state constitutional claim if the waiver of governmental immunity is in dispute. Trial courts retain the authority post-*Bigelow* to grant a motion to dismiss a state constitutional claim that is insufficient on its face. In such situations, it doesn't matter whether an AAR is available: dismissal is proper inasmuch as the complaint's own allegations show the plaintiff isn't entitled to relief. The *Bigelow* opinion may lend itself to confusion on this point because the section on the plaintiffs' constitutional claims doesn't discuss whether the plaintiffs actually alleged violations of the North Carolina Constitution. Earlier in the opinion, though, one of the reasons the court of appeals gives for reversing the dismissal of the wrongful discharge claim is that "[v]iolations of a plaintiff's rights under the North Carolina Constitution . . . will support a claim of wrongful discharge from public employment." It therefore appears that the court evaluated the sufficiency of the plaintiffs' constitutional claims as part of its analysis of the plaintiffs' wrongful discharge claim.

Furthermore, *Bigelow* doesn't mean that plaintiffs should be permitted to pursue state constitutional claims when their own actions have made it impossible to obtain relief in tort. The court of appeals specifically observed: "The reasoning in *Craig* clearly does not extend to situations where a plaintiff has lost the right to pursue an [AAR] due to his own action." So, for instance, if a plaintiff is barred from pursuing her negligence claim because she didn't file suit within the three years required by statute, she may not cite the inability to obtain relief in negligence to show that she lacks an AAR.

The *Bigelow* decision makes it more difficult for local governments to have state constitutional claims dismissed in the early stages of litigation based on the existence of an AAR. Fortunately for local governments, these claims remain subject to dismissal at the outset of a lawsuit when a plaintiff's factual allegations fail to describe a violation of the North Carolina Constitution.

Links

- www.ncleg.net/Legislation/constitution/ncconstitution.html
- caselaw.findlaw.com/nc-court-of-appeals/1630573.html
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=115c-42
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-435
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